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**IN THE
COURT OF APPEALS OF INDIANA**

MAX W. BEDWELL, Individually and)
as Limited Successor Special Guardian of)
the Estate of Jennie M. Shepherd, an incapacitated)
adult; RONALD L. BEDWELL, and)
GLENN E. BEDWELL,)

Appellants-Plaintiffs,)

vs.)

No. 77A01-0508-CV-336

ROBERT E. SPRINGER, MARK LEO)
REED and REED & SPRINGER,)

Appellee-Defendant.)

APPEAL FROM THE SULLIVAN CIRCUIT COURT
The Honorable David R. Bolk, Special Judge
Cause No. 77C01-0409-PL-320

October 17, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Max W. Bedwell, individually and as limited successor guardian of the estate of Jennie M. Shepherd, an incapacitated adult, Ronald L. Bedwell, and Glenn E. Bedwell appeal the trial court's order granting summary judgment to Robert E. Springer, Mark Leo Reed, and the law firm of Reed & Springer (collectively referred to as the "Attorneys"). The Bedwells raise a single issue for our review: whether the trial court properly granted summary judgment to the Attorneys. Concluding that the Attorneys were entitled to judgment as a matter of law, we affirm.

Facts and Procedural History

Jennie Bedwell married Lester Shepherd in 1959. At that time, she had three sons, Max, Ron, and Glenn, from her first marriage. Lester had two children by a prior marriage, Porter and Larry. In November of 1988, Jennie suffered the first in a series of strokes and thereafter became unable to care for herself or manage her property. Jennie and Lester were married until Lester's death in 2002.

Mark Reed and Robert Springer are attorneys with the law firm of Reed & Springer. In September of 1991, Springer undertook representation of Jennie and on her behalf prepared and caused to be executed and recorded a durable power of attorney in favor of Lester. Thereafter, Lester used the power of attorney in managing the marital property. In February of 1992, Springer prepared Revocable Trust Agreements for both Jennie and Lester, with virtually identical and reciprocal testamentary provisions. Lester was named the trustee, and Max, Ron, and Glenn, as well as Porter and Larry, were named as remaindermen beneficiaries of both trusts. In December of 2001, Reed prepared an amendment to Lester's

trust that materially changed the testamentary provisions, adversely affecting Max, Ron, and Glenn's interests. Lester died on September 16, 2002.

In December of 2002, the Bedwells, on behalf of Jennie, filed a claim against Lester's estate, alleging that Lester exerted undue influence over Jennie in the creation of the trusts and breached his fiduciary duties by mishandling, mismanaging, or improperly disposing of trust assets in excess of two million dollars. Sometime thereafter, Teri Lorenz was appointed as Guardian Ad Litem for Jennie and as special guardian of Jennie's estate. On February 26, 2004, First Financial Bank, as trustee of Lester and Jennie's trusts, Porter and Larry Shepherd, the Bedwells, and Teri Lorenz as guardian of Jennie's estate, entered into a Mediated Settlement Agreement (the "Agreement") to resolve their various disputes. The Agreement provided for a reconfiguration of the trusts and a redistribution of certain property interests between the parties. It also contained the following release provision:

All of interested parties whose signatures are affixed hereto (hereinafter "Signatories"), conditioned upon and for and in consideration of the Court's approval of and the performance of the Compromise, the sufficiency of which is hereby acknowledged, hereby forever release and discharge each other, their heirs, personal representatives, attorneys, agents, successors, beneficiaries and assigns, and all other persons or entities who might be liable, none of whom admit any liability to the Signatories, but all dispute any liability to the Signatories, of and from any and all manner of actions, causes of action, suits, accounts, contracts, debts, claims, and demands whatsoever, at law or in equity, and however arising, on or before the date of this release, including but not limited to, all matters asserted, or which could have been asserted, by any of the Signatories in that certain actions [sic] pending in Sullivan Circuit Court, State of Indiana, as above entitled under the above-referenced Cause Numbers or any other matter whatsoever. Nothing contained herein shall be construed as a release of any claim or cause of action by any of the Bedwells against Mark Reed, esq. or Robert Springer, esq. for acts or omissions related to legal services rendered prior to September 16, 2002. Further, nothing contained herein shall be deemed a release of any dispute over ownership of tangible personal property of Lester or Jennie.

Appellants' Appendix at 55 (emphasis added). The Sullivan Circuit Court approved the Agreement on March 8, 2004.

On September 16, 2004, the Bedwells filed the complaint that underlies this appeal. Max, individually and as the "Limited Successor Special Guardian" of Jennie's estate, Ron, and Glenn filed a legal malpractice action against the Attorneys, alleging breach of contract, negligence, conflict of interest, constructive fraud, and vicarious liability. The complaint alleges in part as follows:

21. That on or about September 10, 1991, Springer and the law firm of Reed & Springer undertook representation of Jennie and on her behalf prepared, ostensibly had her execute, then witnessed the execution of and caused to be recorded a certain general durable power of attorney in favor of Lester. . . .

* * *

29. That on and after September 10, 1991, Lester [and the Attorneys] utilized the Power of Attorney to transfer, deal with, manipulate and dispose of their [sic] marital property of Lester and Jennie, and to terminate the joint tenancy and tenancy by the entireties ownership of marital property, including marital real estate, personalty and intangible property, thereby extinguishing Jennie's interest, terminating Jennie's right of survivorship and adversely affecting the rights and property interests of Max, Ron and Glenn as remaindermen beneficiaries of the trusts and as children, next of kin and heirs at law of Jennie.

COUNT I – BREACH OF CONTRACT

* * *

31. Jennie entered into a contract with attorney Springer and the law firm of Reed & Springer for legal representation in connection with estate and succession planning and preservation and protection of her interests in property.

32. That [the Attorneys] breached such contract when they failed to represent Jennie's interests in regards to the Power of Attorney, the trusts and various transfers, manipulations and dispositions of marital assets and property in which Jennie had an interest at and following the time of her incapacity.

* * *

COUNT II – NEGLIGENCE

* * *

38. That the conduct of the Defendants, and each of them, since the onset of Jennie's incapacity in November, 1988, has failed to meet the applicable minimum standard of care of a reasonably prudent attorney in the State of Indiana.

* * *

COUNT III – CONFLICT OF INTEREST

* * *

41. That at all times relevant, Jennie was a client of the law firm of Reed & Springer and enjoyed a special attorney-client relationship with said law firm and its members, Springer and Reed.

42. That as a result of such attorney-client relationship, attorney Springer, attorney Reed and the law firm of Reed & Springer owed Jennie a fiduciary duty of trust and loyalty to act in good faith to preserve, protect and secure Jennie's interests in property, as well as the interests of her remaindermen.

43. That the Power of Attorney, Jennie's Trust, Lester's Trust, the First Amendment to Lester's Trust and various other documents, instruments of transfer, deeds and conveyances of marital property were all prepared, executed and implemented during times when [the Attorneys] had undertaken simultaneous dual representation of both Jennie and Lester.

44. That the property interests of Jennie, including the interests of her remaindermen, and the property interests of Lester were and are adverse.

45. That by assisting, enabling and facilitating Lester's efforts to transfer, manipulate and dispose of marital property whereby Jennie's survivorship and entireties interests in marital property, including the interests of her remaindermen, were extinguished or otherwise adversely affected, [the Attorneys] engaged in and committed conflict of interest.

* * *

COUNT IV – CONSTRUCTIVE FRAUD

* * *

50. That [the Attorneys] violated such duty [of trust, care and confidence] to Jennie on multiple occasions following the onset of her incapacity in November, 1988, by, among other things, preparing and facilitating her execution of the Power of Attorney in favor of Lester, and by enabling and assisting Lester in transferring and disposing of marital assets and property and enabling, assisting and facilitating Lester in terminating Jennie's survivorship and entireties interests in marital property and the remaindermen interests of Max, Ron and Glenn in such assets and property, they being the known natural born children of Jennie and the natural objects of her bounty.

* * *

52. That as a direct and proximate result of Jennie's reliance upon the professional legal advice, counsel and guidance of [the Attorneys], Jennie has suffered loss and damages and her children and remaindermen, Max, Ron and

Glenn, likewise now upon the death of Lester have in fact also suffered loss and damages.

53. That as a further direct and proximate result of such breach of duty and constructive fraud by [the Attorneys], Lester gained an advantage during his lifetime and now, upon his death, his children, Porter and Larry have benefited at the expense of Jennie and her children, Max, Ron and Glenn.

Appellants' Appendix at 13-19.

The Attorneys filed a motion for summary judgment, alleging that the Bedwells' individual claims were barred by the statute of limitations and that Max's claims as Limited Successor Special Guardian of Jennie's estate were barred by the release in the Agreement. The trial court granted the motion for summary judgment¹ and the Bedwells now appeal.

Discussion and Decision

I. Summary Judgment Standard of Review

Our standard of review for a ruling on summary judgment is well-settled: summary judgment is appropriate "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Ind. Trial Rule 56(C).

Upon appeal, we are bound by the same standard as the trial court. We consider only those facts which were designated to the trial court at the summary judgment stage. We do not reweigh the evidence, but instead liberally construe the designated evidentiary material in the light most favorable to the non-moving party to determine whether there is a genuine issue of material fact.

St. Joseph County Police Dept. v. Shumaker, 812 N.E.2d 1143, 1145 (Ind. Ct. App. 2004), trans. denied. "A genuine issue of material fact exists where facts concerning an issue which

¹ The trial court's order also disposed of several other pending motions, none of which are relevant to this appeal.

would dispose of the litigation are in dispute or where the undisputed material facts are capable of supporting conflicting inferences on such an issue.” Ross v. Indiana State Bd. of Nursing, 790 N.E.2d 110, 115 (Ind. Ct. App. 2003). A trial court’s grant of summary judgment is clothed with a presumption of validity, and the appellant bears the burden of demonstrating that the trial court erred. Carter v. Indianapolis Power & Light Co., 837 N.E.2d 509, 514 (Ind. Ct. App. 2005), trans. denied. If the trial court’s ruling can be sustained on any theory or basis supported by the record, we must affirm. Id.

II. Legal Malpractice

The statute of limitations for a claim of legal malpractice is two years. See Ind. Code § 34-11-2-4; Estate of Spry v. Batey, 804 N.E.2d 250, 252 (Ind. Ct. App. 2004), trans. denied. Generally, a cause of action accrues when a wrongfully inflicted injury causes damage. Estate of Spry, 804 N.E.2d at 252-53. “For a cause of action to accrue, it is not necessary that the full extent of damage be known or even ascertainable, but only that some ascertainable damage has occurred.” Silvers v. Brodeur, 682 N.E.2d 811, 813-14 (Ind. Ct. App. 1997), trans. denied.

The Bedwells contend that they suffered no damage until Lester’s death on September 16 and the statute of limitations did not begin to run until then. They cite Shideler v. Dwyer, 275 Ind. 270, 417 N.E.2d 281 (1981), in support of their argument. In Shideler, our supreme court held that in an action for legal malpractice in the drafting of a will, the two-year statute of limitations began to run at the death of the testator. Id. at 290. We note first that wills and trusts are different creatures, and therefore, the Shideler rule for malpractice in the drafting of a will does not necessarily apply to alleged malpractice in the drafting of a trust, especially a

revocable inter vivos trust. We need not decide that issue, however, because it is apparent from the complaint that the true nature of the claims is not negligence in the drafting of a testamentary document, but negligence in the drafting of documents Lester used during his lifetime to manage the marital estate. Because Lester's use of those documents necessarily ended on September 15, 2002, the statute of limitations began to run, at the latest, as of that date and ended on or before September 15, 2004. The complaint filed September 16, 2004, was therefore untimely.

Also, as to the release, we again agree with the Attorneys that any claims Jennie had against them were released as part of the Agreement.² In Huffman v. Monroe County Cmty. Sch. Corp., 588 N.E.2d 1264 (Ind. 1992), our supreme court adopted the rule set forth in the Restatement (Second) of Torts that ““a valid release of one tortfeasor from liability for harm, given by the injured person, does not discharge others liable for the same harm, unless it is agreed that it will discharge them.”” Id. at 1267 (quoting Restatement (Second) of Torts § 885(1)). In adopting this rule, the court stated:

The effect of this rule is to give life to the parties' intent. A release executed in exchange for proper consideration works to release only those parties to the agreement unless it is clear from the document that others are to be released as well. A release, as with any contract, should be interpreted according to the standard rules of contract law. Therefore, from this point forward, release documents shall be interpreted in the same manner as any other contract document, with the intention of the parties regarding the purpose of the document governing.

² The Bedwells briefly, and without citation to authority, claim that Teri Lorenz, as Guardian of Jennie's estate, had no authority to bind Jennie to a release of any claims against the Attorneys because the terms of her special appointment granted her only the authority to “investigate” and “report” possible claims, not settle them. Appellant's Appendix at 148. However, the trial court that appointed Lorenz also approved the Agreement, and we assume that if the trial court had any concerns about Lorenz's authority to enter into the Agreement on Jennie's behalf and bind her to its terms, it would not have done so.

Id. This is the rule whether the tortfeasors are successive or joint.

The Bedwells claim that there was no intent to release the Attorneys because the Attorneys were not parties to the Agreement. However, the fact that they were not parties to the Agreement asks the question; it does not answer it. In addressing the issue of who is covered by a given release, we are called upon to determine whether the parties to the agreement also intended to release those who were not parties to the agreement. A release executed in exchange for proper consideration works to release only those parties to the agreement unless it is clear from the document that others are to be released as well. Depew v. Burkle, 786 N.E.2d 1144, 1148 (Ind. Ct. App. 2003), trans. denied. Language indicating that the signatory tortfeasor and “all other persons, firms or corporations liable or who might be claimed to be liable” are released from liability has been held to release the non-party joint tortfeasor. Dobson v. Citizens Gas and Coke Util., 634 N.E.2d 1343, 1345 (Ind. Ct. App. 1994). See also Stemm v. Estate of Dunlap, 717 N.E.2d 971, 973, 976 (Ind. Ct. App. 1999) (holding that release of the signatory tortfeasor and “all other persons and organizations who are or who might be liable,” also released the joint tortfeasor). But see Depew, 786 N.E.2d at 1148, 1149-50 (holding that release of signatory tortfeasor and “all other companies and persons” did not necessarily also release the successive tortfeasor). The mere fact that a release includes the term “all” is not determinative, but it is a consideration. Id. at 1150.

Here, there was specific language limiting the release with respect to the Attorneys, but it applied only to the Bedwells,³ not Jennie. Had the parties intended that the Attorneys

³ The Agreement specifically stated that references to the “Bedwells” were to Glenn, Ronald, and Max Bedwell collectively. Appellant’s Appendix at 54.

would not be released by anyone, there would have been no need to include this specific limiting language. Accordingly, even if the complaint had been timely filed, Jennie released any claim she had against the Attorneys.

Conclusion

The Attorneys were entitled to judgment as a matter of law because the Bedwells filed their complaint after the expiration of the statute of limitations, and, in the case of Jennie, released any malpractice claim. The trial court's grant of summary judgment to the Attorneys is therefore affirmed.

Affirmed.

SHARPNACK, J. and NAJAM, J., concur.